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# PRODUCING THE ‘PROBLEM’ OF NEW PSYCHOACTIVE SUBSTANCES (NPS) IN ENGLISH PRISONS

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## **Abstract**

*Background:* There has been a significant change in the types of substances consumed within English prison settings in the last eight years. There have been particular concerns regarding the acceleration in the use and availability of New Psychoactive Substances (NPS), mainly synthetic cannabinoids. Although NPS were identified as a ‘problem’ in prisons in 2011, government responses emerged only in 2015. As yet, there is no overarching policy document or strategy for dealing with NPS. This paper analyses the various strands of the response to NPS in prisons published from January 2015 to December 2016.

*Methods:* Drawing on Bacchi’s ‘What’s the problem represented to be’ framework, the ways in which the NPS ‘problem’ in prisons has been represented is analysed through a number of related policy texts including press releases, new legislative and regulatory measures, government documents and training package.

*Results:* From the various measures introduced to deal with the ‘problem’, NPS use is produced primarily as a law, order and control ‘problem’ requiring regulation, penalties and control, rather than a ‘demand problem’ calling for prevention, education, treatment and harm reduction or a ‘regime problem’ demanding greater emphasis and resources for purposeful activities such as education, training and work opportunities. This problematisation of drug use in prisons has a history dating back to the 1995 prison drug strategy and has become entrenched and reproduced within policy development over time.

*Conclusion:* The law, order, and control problematization blames the volatility of the substances and the individual prisoners who use them as key factors contributing to the current prison crisis, rather than as consequences of the wider practices, cultures, contexts, and conditions. Multiple representations of the problem of NPS in prisons are needed in order to address the regime and structural issues which lead those imprisoned to use substances.

**Key words:** NPS, prisons, problematization, Bacchi, prison drugs policy, England

## **Introduction: new psychoactive substances in prisons**

In the last eight years, new psychoactive substances (NPS) have become accepted as a distinct category of substances in their own right. As Potter and Chatwin (2018) argue, some of these substances are not ‘new’ and hundreds of substances with different effects have been effectively lumped together into one catch-all category which has significant consequences for policy development and for the people who use them. By the end of December 2017, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) were monitoring more than 670 new psychoactive substances with 51 substances reported for the first time in 2017 to the EU Early Warning System (EMCDDA, 2018a). Recent European Drug Reports point to NPS use resulting in serious harms and playing increasing roles in hospital emergencies and some drug-induced deaths (EMCDDA, 2015a; 2016b; 2018c). Across the globe, there has been growing concern about how to develop effective legislation, policies and practice to deal with the harms associated with their use, supply and production (ACMD, 2011; UNODC, 2013; Home Office, 2014; EMCDDA, 2015b; 2016a). In fact, NPS have become one of the most pressing ‘problems’ preoccupying drug policy makers (Potter and Chatwin, 2018). Underpinning this policy interest are assumptions concerning the materiality of NPS in terms of their properties and effects in that they are perceived to be inherently dangerous, risky and harmful substances which produce predictable effects and results (Keane, 2002; Fraser, 2011).

Although the overall use of NPS in the UK has remained low in relation to other drugs, there is increasing concern among policy makers and practitioners about problem use and harms within some communities experiencing high levels of poverty, deprivation and social disadvantage (DrugScope, 2014; Shapiro, 2016) and within some risk groups (EMCDDA, 2016a; 2017). For example, the increased use of NPS among established populations of people with heavy drug use and among emerging groups of vulnerable young people has been

highlighted through research in several European countries (see Grund et al, 2016; Blackman and Bradley, 2017; Alexandrescu, 2017). These substances have gained some popularity in specific populations including participants in nightlife settings, men who have sex with men, people who inject drugs, homeless and prison populations (EMCDDA, 2016a; 2017; 2018b; Pirona et al, 2016; Ralphs et al, 2017; Ralphs and Gray, 2018).

In Britain, there has been a significant change in the types of substances consumed by criminal justice populations, particularly within prison settings in the last eight years. In a report by HM Inspectorate of Prisons (HMIP) (2015) on the changing patterns of substance use in adult prisons, there were concerns regarding the acceleration in the use and availability of NPS (particularly synthetic cannabinoids known as ‘Spice’ and ‘Black Mamba’). The report highlighted bullying and violence which was seen to be associated with the NPS market, acute health episodes requiring Accident and Emergency attendance and NPS-linked deaths. Violence, bullying and adverse health effects have also been documented in research studies (Ralphs et al, 2017; User Voice, 2016). The HM Inspectorate of Prisons concluded (2015:7) that, ‘NPS have created significant additional harm and are now the most serious threat to safety and security of the prison system that our inspections identify’. The Rehabilitation for Addicted Prisoners Trust (RAPT), a drug treatment agency with longstanding expertise of delivering treatment in prisons, expressed concern that ‘the situation on the ground is developing more rapidly than the sector is able to respond, and it is undermining good order and discipline in prisons’ (RAPT, 2015: 3). This paper is concerned with analyzing the initial policy response to the issues raised by NPS in prisons from January 2015 to December 2016.

In 2013-14, 34% of male prisons reported issues with synthetic cannabis and this figure rose to 64% in 2014-15 (HMIP, 2015). In England and Wales, the number of incidents where NPS were found by prison staff increased from 136 in 2011 to 4,261 in 2015 (Smith, 2016).

Synthetic cannabinoids were the second most commonly used drug (10%) within prisons after cannabis (13%) (HMIP, 2015). Research focused on synthetic cannabinoids has been undertaken by a few organisations and researchers. For example, a survey of prisoners conducted by User Voice (2016) found that synthetic cannabinoids (ie. Spice) were the most popular drugs of choice in prison reported by one-third (33%) using them in the last month, much greater than use of heroin (8%), heroin substitutes (14%) and cannabis (14%). However, estimates from discussions with prisoners put the figures for Spice use much higher from 40% to 90% (User Voice, 2016), 80% to 90% in one English prison (Ralphs et al, 2017) and national estimates from 60% to 90% of the prison population in England and Wales (Centre for Social Justice, 2015).

Synthetic cannabinoids are known to be popular in prisons because they are undetectable by routine mandatory drug testing (MDT), do not have a distinctive ‘drug’ smell, easy to conceal, relatively cheap to purchase, help to relieve the boredom and monotony of prison life, offer an altered state of reality and are perceived not to be ‘illegal’ by prisoners (Lynch, 2015; Baker, 2015; Reuter and Pardo, 2016; Ralphs et al, 2017; Public Health England, 2017). Research by Ralphs et al (2017) uncovered a thriving and lucrative market around synthetic cannabinoids with huge profit margins for those involved in dealing, effectively replacing the traditional drugs market in prison. Spice has been described by some prisoners as a ‘bird killer’ (‘bird lime’ is Cockney rhyming slang for ‘prison time’) in that they believe it helps their sentences go faster by relieving the boredom of prison life and inducing relaxation (Baker, 2015; User Voice, 2016). There have also been reports that vulnerable prisoners were being used as “Spice Pigs” or “Mamba Muppets” to test batches of the substance to assess effects and safety and for the entertainment of other prisoners (HMIP, 2015; Prison and Probation Ombudsman, 2015). According to the Prisons and Probation Ombudsman (2017), 64 deaths in custody were associated with NPS use between June 2013 and April 2016. In

September 2015, the Prison Officers' Association wrote to the Chief Coroner for England and Wales to express concern about NPS-related deaths in prison (Lynch, 2015).

Although NPS were identified as an issue in British prisons by the HM Inspectorate of Prisons in 2011, national prison guidance emerged only in 2015. The initial Ministry of Justice response to NPS in prison was 'paralysis', mainly because MDT procedures could not detect these new substances (McBride, 2016). Similar to the initial responses to NPS availability and use in the community (EMCDDA, 2016a), the reactions in British prisons to date have been mainly regulatory. For example, in January 2015, the Ministry of Justice (2015) introduced a 'crackdown' on NPS supply and use in prisons, involving new penalties for prisoners who use these substances and security measures to detect and eradicate supply. In May 2016, the Psychoactive Substances Act banned any substance that has a psychoactive effect and introduced new offences including production, supply, possession with intent to supply, importation and exportation. The Act makes a distinction between the community and custodial settings in relation to possession. In the community, possession for personal use is not an offence, but possession in prisons and other custodial institutions is an offence. A toolkit and associated training package was developed by Public Health England (PHE) to support custodial, healthcare and substance use staff in dealing with NPS in prisons (Lynch, 2015; Public Health England, 2015). From November 2015 to May 2016, 32 training events took place with a total of 650 participants (Public Health England, 2017).

The response to NPS in prisons is not located in a single document, instead there are several different strands including press releases, new legislative and regulatory measures, and a PHE toolkit/training package for prison staff. The aim of this paper is to analyse these various strands of the initial response to NPS in prisons that emerged from January 2015 to December 2016. It employs the 'What's the problem represented to be' (WPR) framework developed by

Carol Bacchi (2009) to analyse the ways in which NPS have been problematized and represented thus far in policy-related texts. The next section of the paper will explain Bacchi's framework in greater detail and the methodology employed in this analysis.

## **Conceptual framework and methodology**

Influenced by Foucault, the 'What's the problem represented to be?' (WPR) approach is a post-structural framework developed by Carol Bacchi to analyse responses to policy 'problems' (Bacchi, 2009; 2012a; 2012b; Bacchi and Goodwin, 2016). It is increasingly being applied to understand the ways in which drugs issues are problematized and represented in policy and other texts (see Fraser and Moore, 2011; Lancaster and Ritter, 2014; Fraser et al, 2014; Seear and Fraser, 2014; Martin and Aston, 2014; Lancaster et al, 2015a; 2015b; Piennar and Savic, 2016). Although her framework has not been used as extensively in the areas of prisons and criminal justice policy, a notable exception is the work of Walker et al (2018) which explored how the 'problem' of drug use was represented in Australian prison drugs policy (ie. Identified Drug User Program - IDUP) and its effects on young men in prison and their families.

Policies claim to be the solutions to problems that exist and the WPR approach challenges this assumption. Bacchi's starting point for any policy response is to ask: 'What is the problem represented to be, for which this policy is the answer?' (Bacchi, 2009; 2012a). This approach shifts the focus from 'problem solving' to 'problem questioning'. Policies or policy proposals constitute or produce particular representations of problems. Therefore governments are not reacting to 'problems', but '*active* in the creation (or production) of policy 'problems' (Bacchi, 2009:1). Identifying and exploring the implied 'problems' within policy

proposals enables an understanding of the ways in which particular representations of problems are crucial to the processes and practices of governance. Problematisations are therefore integral to the policy. As Bacchi (2009: xi) argues, ‘we are governed through problematisations, rather than through policies’, thus challenging the view that policies address problems. The constitution or representation of ‘problems’ matters because it impacts on how the issue is discussed, how the people involved are treated and how they are evoked to think about themselves (Bacchi, 2009; 2012b).

Bacchi’s framework puts forward six interconnected questions in relation to policies or policy proposals and then asks analysts to apply the set of questions to their own problem representations:

- 1) What’s the ‘problem’ represented to be in a specific policy?
- 2) What presuppositions or assumptions underlie this representation of the ‘problem’?
- 3) How has this representation of the ‘problem’ come about?
- 4) What is left problematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?
- 5) What effects are produced by this representation of the ‘problem’?
- 6) How/where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

Step 7: Apply this list of questions to your own problem representations

(Bacchi, 2009: xii)

For Bacchi and Goodwin (2016: 17), policy is defined ‘in an expansive sense to include both the activities of state institutions and of other agencies and professions involved in maintaining social order’. They argue that policy texts can include a wide range of documents beyond the traditional written policy or strategy document such as legislation, bills, speeches, media statements and organizational reports, all of which are relevant to this analysis.



In order to interrogate the problem representations of NPS use in English prisons, several documents published from the beginning of 2015 to the end of 2016 were analysed (see Table 1 for a timeline of the documents). As discussed above, this includes the press release from the Ministry of Justice announcing the new crackdown on NPS in prisons, the new measures for testing and supply reduction through the Criminal Courts and Justice Act 2015 and Serious Crime Act 2015, the new regulatory framework introduced by the Psychoactive Substances Act 2016, the toolkit produced by Public Health England to raise awareness amongst staff in prisons, and the proposals in the White Paper on Prison Safety and Reform. At the time of writing, there was no holistic national strategy or policy document for dealing with NPS in prisons. The HM Inspectorate of Prisons (2015) argued that the response to NPS in prisons has been ad hoc, inadequate and inconsistent across the prison estate.

(Insert Table 1 about here)

Drawing on Bacchi's framework, her first four questions were used as tools for analyzing the problem representations contained within the documents. As Bacchi (2009: 101) argues 'every question need not always be addressed in every analysis, although it is useful to keep the full set of questions in mind.' The first section of the paper explores questions 1 and 2 of Bacchi's framework and examines the ways in which the 'problem' of NPS use is represented in the various strands of the response and the assumptions underpinning these representations. The second section explores question 3 focusing on the processes and history behind these representations of the 'problem'. The third section explores question 4 and examines the silences within the problem representations and suggests alternative ways of thinking about the 'problem'.

## **NPS in prisons represented as a law, order and control ‘problem’**

Taken together, the policies which emerged around NPS use in prisons during 2015-2016 represented these substances as predominantly a ‘problem’ for law, order and control with a focus on disrupting and eradicating supply in prisons and punishing those caught dealing and using them. The Ministry of Justice (2015) press release outlining the response to NPS in prison was entitled, ‘*New crackdown on dangerous legal highs in prison*’. The discourse surrounding the response to NPS emphasised the ‘get tough’ approach highlighting the ‘dangerousness’ of the substances which required a ‘crackdown’ and ‘zero tolerance’ approach. The ways in which NPS are problematized implies that existing approaches were ‘soft’ and ‘lenient’ due to the lack of tools and technology to detect and control supply and powers to punish those prisoners using and dealing NPS in prison. In the press release, Chris Grayling, the then Minister for Justice stated:

*No one should be under any illusion how dangerous the abuse of any drug is. We are determined to make sure governors have every power at their disposal to detect supply, punish those found using or dealing, and enforce a zero tolerance approach.* (Ministry of Justice, 2015: 1)

The security and prevention measures included training specialist dog teams to detect synthetic drugs; a monitoring project to analyse urine samples and drug seizures for the presence of synthetic, prescription and other controlled drugs; and awareness campaigns to warn prisoners and visitors of the sanctions if they bring synthetic drugs into prisons. The strategy aimed to equip prison governors with new powers (including a reminder of existing powers) for detection and punishment. The punishment options included prosecution and further sentence, additional days in prisons, segregation, movement to a higher security prison, removal of privileges, forfeiture of earnings and closed visits.

During 2015-2016, various pieces of legislation introduced new offences and powers surrounding the use and supply of NPS in prisons. The Serious Crime Act 2015 made it an offence to throw any article or substance into a prison (ie over or through a boundary of the prison), including all legal and illegal substances. Here, the ‘problem’ is represented to be the couriers of the substances and therefore a supply issue. The Criminal Courts and Justice Act 2015 introduced new powers to specify any substance/product (i.e. not a controlled drug under the Misuse of Drugs Act 1971) for which a prisoner may be required to provide a sample for testing. This new legislation allowing for the testing of these substances would assist the prison authorities in both identifying and punishing prisoners using NPS. The Psychoactive Substances Act 2016, introduced after this initial ‘crackdown’ on NPS in prisons, makes a clear distinction between possession in the community and in ‘custodial institutions’ (refers to prisons, institutions and secure settings for young offenders, immigration removal centres and facilities, and Armed Forces custody premises). In the community, it is not an offence to possess NPS, while in prisons it is an offence, therefore producing a clear binary between the prison and community under the new Act.

The assumptions underlying these representations of the ‘problem’ is that NPS in prisons need controlling and regulating in the same ways that other ‘illegal’ substances are controlled and criminalised. By removing the legal/illegal binary and closing the gap between the two categories of substances, the assumption is that prisoners will be deterred from using and dealing these substances because they will now be sanctioned and punished. Underpinning this strategy is the assumption that prisoners will make the ‘right choice’ by calculating and recognizing the increased risk of getting caught and punished for use and supply.

*Prisoners should be very clear – if they think they can get away with using these substances, they need to think again. And the same applies to those who are the suppliers, whether they’re inside or outside the prison gates. (Justice Secretary, Chris Grayling quoted in Ministry of Justice, 2015: 1)*

This denies the agency and rationality of prisoners who actively choose to use drugs for pleasure or as a way to cope with or alleviate the ‘pains of imprisonment’ (Sykes, 1958) or who choose to become involved in dealing to gain financial power, status, social and personal identities and social networks in prisons (Crewe, 2005; 2006; Mjaland, 2016). In their analysis of the Identified Drug User Program in Australian prisons, Walker et al (2018) also identify this underlying logic of deterrence and rational choice or that increased control and punishment for drugs involvement will affect the decision making of young men imprisoned and that they will weigh up the risks, effort and rewards and ‘choose’ not to use drugs in the first place or to stop using drugs and enter treatment. These problem representations simultaneously produced those imprisoned as ‘rational’ and ‘choosing’, but also as ‘untrustworthy’ and ‘deserving of punishment’ and these subjectivities had harmful effects for the young men and their families including increasing tension and violence, prisoners switching to other drugs to avoid detection, increasing health-related harms and deterrence of visitors. These entrenched problem representations have implications for policy and practice by limiting how the drugs ‘problem’ is conceptualized and by closing down alternative ways of understanding prison drug use and policy options, such as improving prisoners’ access to prescribed medication to reduce physical and mental suffering; improving and maintaining family and social ties to increase social capital and financial stability post-release and employing incentive-based programmes, rather than punishment based approaches (Walker et al, 2018).

The 2016 White Paper on Prison Safety and Reform reinforced and embedded these representations of the ‘problem’ as being the lack of control and regulation of the substances, inadequate tools and technology to detect and block the substances and the inability to punish prisoners who are using and dealing them. The evolving market in NPS and their use were viewed as ‘the most pressing threats to security in prisons’ (Ministry of Justice, 2016a: 10). The main response was to ‘redouble...efforts to tackle this challenge with the aim of

eradicating illicit drug use in prisons’ (Ministry of Justice, 2016a: 46). It reiterated measures to enhance drug testing; to introduce legislation to allow new tests for psychoactive substances and to make it a criminal offence to smuggle them into prison; to secure the perimeters of prisons; to improve searching capability to search both staff and prisoners; to reduce opportunities for visitors to smuggle drugs in prisoners; to explore drug detection technologies (ie. body scanners and drug trace detectors); to improve intelligence sharing between agencies and to examine technologies to detect and block drones. New Prison League Tables were proposed which would introduce drug tests on entry and exit to prison and track the average rate of positive results from random drug tests to measure ‘health progress’ as a performance indicator (Ministry of Justice, 2016a); however, it is vague what ‘progress’ is being measured and there are no specific indicators on drug treatment outcomes. Although MDT is represented mainly as a supply side and deterrence measure, it could also be represented in demand reduction terms where prisoners are identified as needing help through testing and referred into treatment. Within the document however, the emphasis on demand reduction is secondary to supply reduction and enforcement measures. Few new resources were made available for treatment activities. Alternative options, such as partnership working and better use of existing resources, were to be considered (Ministry of Justice, 2016a: 47).

Alongside the introduction of new regulatory and punitive responses to deal with NPS in prisons, a toolkit and training package on NPS was developed for custodial and healthcare staff and drug and alcohol workers (Public Health England, 2015). The format of the toolkit is mainly the provision of information and includes sections on definitions and categories of NPS, the law, prevalence data, reasons for the popularity of NPS, challenges for healthcare staff and the wider prison regime, and the management of acute and chronic adverse effects. Within this problematisation, NPS in prisons is represented as a training, knowledge and competence

‘problem’ for prison-based staff. The assumption is that the provision of information will deal with the effects and contain and control the ‘problem’ of NPS.

The ‘crackdown’ on NPS in prisons assumes that the ‘problem’ is one of lack of control over these substances and the prisoners using them. The effects of synthetic cannabis are described as volatile, variable, unstable, unpredictable, but also as acute, adverse and harmful. Similar to the work of Fraser and Moore (2011) and Barratt et al (2017) on drug effects, NPS are constituted as an unknown quantity, but also as inherently harmful and dangerous. Potter and Chatwin (2018: 332) argue that treating NPS as a distinct category of drugs obscures the differences within the NPS category and the similarities between NPS and existing illicit substances. The NPS toolkit lists a number of ‘extreme effects’ of synthetic cannabinoids including ‘convulsions, bizarre behaviour, temporary paralysis, rapid heart rate, aggression and psychosis’ (PHE, 2015: 19) and points to the challenges for the prison regime including ‘the need to restrain and control prisoners behaving abnormally or dangerously’ (PHE, 2015: 21). The ‘problem’ of NPS use is seen to lodge in the substances themselves (Fraser and Moore, 2011) which are described as ‘dangerous’ and linked to the increasing levels of violence within the prison system. Unlike the drugs traditionally preferred in prisons, such as cannabis or opiates, which produce sedative and calming effects (Boys, 2002), the effects produced by NPS are taken for granted, specifically that all prisoners become unpredictable, uncontrollable and violent under the influence: ‘...these substances seem to be a part of the problem around increasing violence in our prison estate’ (Justice Secretary, Chris Grayling in press release, Ministry of Justice, 2015). One consequence of this representation of NPS, particularly synthetic cannabis, is that it has been directly linked to the increasing levels of violence and unrest in prisons. The 2016 White Paper suggests that ‘the increase in violence has in part been fueled by the recent flood of dangerous psychoactive drugs into our prisons’ (Ministry of

Justice, 2016a: 7). The use of NPS has also been blamed for the lack of purposeful activity and good relationships between prisoners and prison staff:

*Dealing with the effects of these substances has made it more difficult for many prisons to run full and purposeful regimes, occupying prisoners in activity to help their journeys to reform. It has made it more difficult for staff to build constructive relationships with prisoners, through which they can combine supervision with helping to change their behaviour and attitudes. (Ministry of Justice, 2016a: 41)*

In the context of reductions in frontline operational staff from 29,660 in 31 March 2012 to 23,080 on 31 March 2016, the use of NPS and the increasing levels of violence in prison were also blamed for the difficulties in retaining existing staff and the need to recruit more staff.

*While it was right to seek to operate prisons more efficiently, the destabilizing effect of changes in the operating environment, such as the introduction of new psychoactive substances – described as a ‘game-changer’ by the Prisons and Probation Ombudsman – means we must now reconsider staffing levels. (Ministry of Justice, 2016a: 41)*

In the latter part of 2016, the prison system was frequently referred to as being in a state of ‘crisis’ both from those within the system and external commentators (see for example, Cavendish, 2016a; Crook, 2016; House of Commons Debates, 2016; Prison and Probation Ombudsman, 2017). The increasing violence against staff and between prisoners, the increasing rates of self-harm and suicide and unrest (including full scale riots at Bedford and Birmingham prisons) were attributed partly to the use of Spice and the volatile effects it produced (HM Chief Inspector of Prisons, 2016a; 2016b; 2017a; 2017b). In an interview after his term as HM Chief Inspector of Prisons had ended in 2016, Nick Hardwick suggested there was a clear link between NPS and violence:

*It’s important not to be under any doubt whatever about the havoc NPS and other drugs cause. You have people pushing them and the debt that is created as a result of the drugs trade in prison leads to violence, it leads to people feeling very insecure, self-harming and so on. There is a direct link between drug availability and violence. I think NPS are one of the major threats to the stability and security of the prison system at the moment. (Cavendish, 2016b)*

From the strategies proposed within the various policy statements and documents from 2015-2016, NPS use was produced primarily as a ‘supply’ and ‘enforcement problem’ requiring regulation, penalties, and control, rather than a ‘demand problem’ requiring prevention, education, treatment, and harm reduction. The outcome of this problem representation has been a punitive regulatory approach, bringing NPS in line with the response to traditional ‘illegal’ drugs in prisons. The aim of policy makers is to make them equivalent reducing the binary between illegal/legal and thus enabling control and regulation of these new substances. The supply reduction and punitive response emerged first, followed by the emphasis on providing staff with information and training and the promise of greater focus on prevention, treatment and harm reduction for the future. This temporal order to the problem representations and emerging strategies have powerful historical antecedents which will be explored in the next section.

### **Continuity with past problem representations and drug policies in prisons**

The goal of Question 3 in Bacchi’s framework is to explore how a current problem representation has come to be or to trace its history over time (Bacchi, 2009). In this case, the aim is to illuminate the processes that allowed for the law and order problem representation to take shape and assume dominance in relation to NPS in prisons in the current period. The response to NPS during 2015 to 2016 has clear continuities to past problem representations and developments in prison drugs policy which have been dominated historically by a focus on regulation, security and punishment, rather than education, treatment and harm reduction (Duke, 2003). A clear example was the first prison drugs strategy published in 1995 (HM Prison Service, 1995) where drugs in prison were represented as control, order and discipline ‘problems’. This problem representation was linked to the increasing populist punitive rhetoric around crime, drugs and prisons at the time (Bottoms, 1995). Similar to the current period, the



prison system was considered to be in a 'crisis' of containment and control with an increasing prison population, overcrowding, and disturbances (Morgan, 1997). Michael Howard, the then Home Secretary, advocated the idea that 'prison works' on deterrent and incapacitative grounds and announced a 'crackdown' on drugs in prison, echoing the current policy discourse of 'crackdowns' and the constitution of NPS as a law and order 'problem'. At the Conservative Party Conference in 1993, Howard argued,

*Prison works....I am particularly appalled by the drug taking in our prisons. This is not something we can tolerate. It is possible to test prisoners for drug use. We haven't been doing it up to now; we will be doing it in the future.*

The 1995 strategy introduced MDT for the first time, enhanced security measures to reduce supply, and punishments for the use of drugs within prisons.

Reducing the level of drug use became one of the strategic priorities of the Prison Service and would be monitored by a new performance indicator measuring the number of positive tests. The aim of this technological solution was to attempt to impose order on a problem which was perceived to be spiraling out of control (Duke, 2003). Similar to the current response to NPS in prisons, the response was underpinned by faith in the deterrent effect of the measures and the logic that prisoners would weigh up the risks and benefits of taking drugs in prisons and decide the risks and sanctions of getting caught through the new security and testing procedures were too great. This confidence in the deterrent effect of these initiatives failed to take account of the reasons people choose to use drugs in prison. Although treatment, rehabilitation and harm reduction were mentioned in the 1995 strategy, the proposals were vague. There was no universal treatment provision across the prison system, although a few pilot drug treatment programmes were introduced. Within the strategy document, the new control, testing and security elements were presented much more explicitly with greater definition and detail compared to the treatment, rehabilitation and harm reduction elements

which were much less explicit, detailed and concrete (Duke, 2003). Moreover, MDT and the security initiatives were universal requirements across the prison system which were backed up by central funding and clear deadlines for implementation, while treatment and harm reduction initiatives were to be established through guidelines, which would be subject to local decisions, resources and timetables. The punitive political context surrounding crime and punishment and the growing emphasis on managerialism ensured that the 1995 strategy was dominated by punitive, but measurable mechanisms such as MDT and increased security (Seddon, 1996). This emphasis on testing as a performance indicator of progress is also a key feature of the current response to NPS.

The review of the 1995 drug strategy highlighted the imbalances between punishment and treatment. Although MDT and the various supply reduction measures were seen as generally successful in meeting their objectives, the review indicated that treatment provision required more fundamental improvements in terms of expansion, throughcare, staff training and inclusion of certain groups (HM Prison Service, 1998a). Within the 1998 prison drug strategy, the ‘problem’ of drugs in prisons was represented in a multitude of ways. In particular, it was represented more as a demand ‘problem’ than in the previous policy document. The 1998 strategy placed greater emphasis on treatment provision, education for young offenders, throughcare, discrimination between dealers and users and between less harmful and more damaging drugs, and identifying strategies to engage short-term and remand prisoners (HM Prison Service, 1998b); however, the overall punitive framework for delivering the strategy where those who use drugs are punished remained intact (Duke, 2003). Since 1998, treatment was further expanded through resources made available via the National Treatment Agency, but also converged with the control and security aspects of the drugs strategy which were further enhanced and strengthened in order to fulfill the goals of crime reduction and public protection (Duke and Kolind, 2017).

The initial responses to NPS in prisons during 2015-2016 mirror the response to drugs during the mid to late 1990s with the introduction of ‘crackdowns’, testing, and punishments for substance use. In both time periods, these responses are based first and foremost on the representation of drugs as law, order and control ‘problems’ in prisons. Representing drugs as a demand ‘problem’ appeared later following a comprehensive review of the policy based on the results of commissioned research in the earlier period. However, constituting NPS and drugs as demand ‘problems’ remain secondary within an overarching problematisation of law, order and control. The problematisations and the temporal order in which they have been invoked have become entrenched within policy development cycles over time. In many ways, the law and order problem representation could be viewed as an easy, ‘off the shelf’ response to the complex and multi-faceted issue of substance use in prisons. However, this problem representation is not inevitable and can be disrupted by representing the problem in alternate ways that lead into different responses, policies and solutions. These alternatives will be explored in the next section.

### **Alternative Representations: NPS use as a demand ‘problem’ and regime ‘problem’**

Bacchi (2009: 13) asks us to consider the limits underlying particular problem representations by exploring what fails to be problematized, the silences within representations and how policies are constrained by the ways in which they present the problem. Alternative representations, issues and perspectives need to be examined. The constitution of NPS in prisons as predominantly a law, order and control ‘problem’ does not engage with the fundamental question: ‘why do prisoners take these substances in prison?’. It was assumed that prisoners were using NPS in prisons because there was no deterrent and they were able to ‘get away with it’ (Ministry of Justice, 2015). The main critique of such deterrence approaches

is that they fail to address the underlying causes of behaviour (Bacchi, 2009). It is important to explore the cultures and contexts that promote the use of different substances within prisons. Producing NPS use as a law, order and control ‘problem’ means that the reasons prisoners use drugs are under-examined, silenced and subsequently not addressed.

Drug use in prisons can be explained through both intra-institutional and extra-institutional circumstances (Duke and Kolind, 2017). Intra-institutional explanations focus on how drug use is a response to the pains of imprisonment (Sykes, 1958), a way of coping and self-medication. Drugs are often used to deal with the boredom and monotony of prison life. As research has shown, drugs are used to manipulate and re-order time, aid sleep and cope with sentences (Cope, 2003) and synthetic cannabinoids have been described as a ‘bird killer’ (User Voice, 2016). An alternative problem representation of NPS use in prisons is that daily regimes in prison are inadequate and not engaging prisoners in meaningful activities. The overall culture, context and conditions of the prison environment need to be considered in order to understand substance use. For example, time out of cells undertaking ‘purposeful activity’ such as education, training, employment and other activities to aid rehabilitation has become increasingly limited in recent years. Only one in seven people said they spent 10 hours or more out of their cell each day and almost one third of people (31%) held in local prisons said they spent less than two hours out of their cell each day (HM Chief Inspector of Prisons, 2016). Lower rates of drug use have been reported by people who spent more than ten hours a day out of the cells (HM Inspectorate of Prisons, 2015). Only 44% of prisons received a positive rating for purposeful activity work in 2015-2016 (HM Chief Inspector of Prisons, 2016). Moreover, the quality of education and training in prisons has been deteriorating (Ofsted, 2015; Taylor, 2014) and prison inspectors found that much of the employment in prisons is mundane, repetitive and not linked to resettlement aims (HM Chief Inspector of Prisons, 2016). The ability to provide a purposeful regime has been affected by the chronic overcrowding, budget

cuts and staff shortages that have plagued the prison service over time (Ministry of Justice, 2016b; NOMS, 2016; Ministry of Justice, 2016c).

Prisons are increasingly described as brutal places where staff and prisoners feel unsafe with the highest rates of death, homicide, assaults, suicides, and self-harm ever recorded in the last five years (Ministry of Justice, 2016d). When they enter prison, prisoners also have ‘imported vulnerabilities’ (Maruna and Liebling, 2005) including histories of problematic drug and alcohol use, mental and physical health problems, high levels of deprivation, homelessness and poor coping skills (EMCDDA, 2012; WHO, 2014) which when combined with the detrimental prison environment characterized by overcrowding, understaffing and deteriorating buildings may encourage, sustain or exacerbate drug use (Wheatley, 2016). The current problem representation of NPS use as a law, order and control ‘problem’ masks the possibility that prisoners are using these substances as a response to these various pains of imprisonment, their imported vulnerabilities and the current conditions, culture and context of the prison environment. It discounts these wider structural and economic issues within the prison setting as explanations and contributing factors. Instead, this problematisation allows NPS use to be blamed for these conditions and further exacerbating them.

These temporal and spatial aspects of drug use in prisons have clear parallels with Suzanne Fraser’s work on waiting for methadone maintenance treatment and the ways time and space co-produce each other as a chronotope of the queue which helps to produce particular methadone subjects (Fraser, 2006: 192). Similarly, the harsh conditions of the prison space combined with the boredom, monotony, repetition and lack of meaning related to prison temporality could provide alternative explanations for the increases in prison violence, deaths and unrest, rather than this being directly caused by NPS. Here, violence and disorder are seen partly as the products of the particular spatio-temporal experiences of prison life. Moreover,

the official view that NPS is directly linked to violence is based on a linear expression of cause and effect. In order to counter this simplistic view, it is useful to draw on the account put forward by Race (2014) of ‘emergent causality’ to demonstrate how causation is emergent and bound up with space and time. Crackdowns on NPS use in prisons position deterrence as a direct and uni-directional effect; however, such an approach cannot account for the more complex dynamics or interplay between space, time and various unforeseen consequences and harms. It is important to explore the multiple objects and practices that contribute to the shaping of drugs in prison contexts.

NPS use in prisons could also be constituted as a demand ‘problem’ in which the response would be to provide more prevention, treatment, rehabilitation, and harm reduction initiatives. As we have seen through both the current and historical responses, this problematization has been secondary to the dominant law, order and control one. The development of prevention, treatment and harm reduction responses has been patchy and ad hoc compared to the universal provision involved in the regulatory response. Although the PHE toolkit aims to provide prison-based staff with information and guidance around dealing with the use of NPS in prisons, there are no universal treatment or harm reduction initiatives specifically targeting NPS at present in prisons. As in the community, the health approaches recommended in prison have been mainly to apply and adapt existing effective drugs interventions to NPS (PHE, 2015; EMCDDA, 2016a). A number of individual drug agencies have been developing innovative responses to NPS in prisons where they deliver services. For example, RAPT has appointed a person to lead on NPS in the prisons they work and established NPS working groups which involve prison management, healthcare and substance use teams (RAPT, 2015). The HM Inspectorate of Prisons (2015: 56) observed examples of ‘effective peer-led education’ on NPS, ‘whereby well-trained and well-supervised prisoners provided effective education to other prisoners’ in three prisons. Peer support and ‘experts by

experience' in NPS are also mentioned as part of the consultancy services, advice, and training offered by the treatment agency, Change, Grow, Live (CGL, 2016). In February 2017, HM Prison Forest Bank issued a harm reduction leaflet to prisoners which details 11 safety rules for taking NPS in prison including beginning with a small amount, chopping powders finely prior to snorting, not sharing needles if injecting, using one drug at a time, not using alone and instructions on how to help someone who has taken NPS including how to place someone in the recovery position.

In contrast to the regulatory response, treatment, prevention and harm reduction have been slow in developing both in the prison and the community and there is no universal provision across the prison system as a whole. As evidenced in some of the examples above, although the demand problematization is present in some prisons, it co-exists within an overarching problematization of NPS being a law, order and control 'problem'. This constrains the development of innovative responses that would help to reduce the harm to those using these substances.

Bacchi (2009) argues that the alternative problem representations put forward by analysts also need to be subjected to critical interrogation in order to explore their underlying assumptions and constitutive effects. When producing NPS as a regime 'problem', the underlying assumption is that people in prison should be leading productive, purposeful and meaningful lives and that they should be making active contributions, reparation and earning their keep while in custody. Moreover, rather than problematizing NPS as a response to the various 'pains of imprisonment' as argued above, an alternative reading may be that people choose to use NPS and other drugs in prison for pleasure and derive social benefits through use such as interactions with others (Crewe, 2005; 2006; Mjaland, 2016). Drug policy debates are dominated by concerns about the risk and harms associated with use and ignore the pleasures

associated with intoxication (Duff, 2008; Duncan et al, 2017). Similarly, the discourse of pleasure is rarely acknowledged in prison policy. Recognising the pleasurable and social aspects of drug use may help to develop interventions which reduce the incidence of drug-related harm and provide activities which offer alternative sources of pleasure.

### **Conclusion: moving toward multiple representations of the ‘problem’**

Bacchi’s WPR approach does not analyse ‘problems’ and ‘solutions’ separately, but begins with a postulated solution and identifies the problem representation implicit within it (Bacchi, 2009; 2012a). By analyzing the policy reactions to NPS in prisons, it is possible to determine how the ‘problem’ has been constituted. NPS has been represented predominantly as a ‘problem’ of supply and lack of control, with the aim of the policy to eradicate the supply and deter those who use the substances through the threat of punishments and applying technology, such as testing and enhanced detection initiatives. The emphasis on regulation through testing and punishment implies that prisoners using these substances are ‘risky’ groups that need to be managed and controlled. If they do not conform to the new rules and regulations, then they will be punished. The current representation of the ‘problem’ blames the volatility of the substances and the individual prisoners who use them as the main causes of the current prison ‘crisis’, rather than as consequences of the wider culture, context and conditions. It has diverted attention away from the more intractable problems within prisons such as budget cuts, decreasing staff levels, overcrowding, cuts to services and provision, lack of purposeful activities and increasing levels of violence, self-harm and suicide. In effect, NPS have been conveniently scapegoated for more fundamental and systemic problems within the prison system that have much longer histories and provide the platform for arguing for more resources to deal with the wider ‘crisis’.



The Ministry of Justice has been actively engaged in producing drugs and NPS in prisons as a law, order and control ‘problems’. This constitution of the ‘problem’ is important because it impacts on the processes, practices and resources for governing people who use these substances in prisons. This problem representation can be traced back to the early 1990s and has become embedded and reproduced in policy and practice over time. A key difference between the mid-1990s and the current period is that in 1995 there was a dedicated policy document outlining the various elements of the prison drugs strategy and a review process based on commissioned research. After the review of the 1995 strategy, the revised 1998 strategy was re-balanced to focus more on treatment and rehabilitation. From the response to NPS in prisons thus far, there appears to have been no learning from the previous problem representations that resulted in imbalances in prison drug policy which were subsequently altered through greater emphasis on demand reduction. Although it may appear difficult to disrupt these entrenched problem representations, Bacchi’s framework provides a method to allow those involved in the development of policy to construct counter discourses or alternative problematisations. For policy workers, it ‘creates the possibility to think otherwise’ (Bacchi and Goodwin, 2016: 108).

In the current phase of policy, the HM Inspectorate of Prisons (2015), which provides independent scrutiny of prison conditions and treatment of prisoners, recommends a whole system approach to drugs in prisons which includes both supply reduction and demand reduction. This recognizes more than one problem representation around the issue. In particular, it places emphasis on reducing the demand for these substances by addressing wider issues that may lead to substance use including action to reduce violence and bullying, provision of purposeful activity to reduce boredom and promote better sleep patterns, and access to health care to provide effective pain management, dental care and hospital appointments, thus reducing the demand for self-medication. The Inspectorate advocates that

treatment for drugs and NPS should include a range of measures including substitute prescribing, psychosocial interventions and harm reduction. Rather than being based on a single representation of the ‘problem’ of NPS in prisons, this type of strategy would need to emerge from multiple representations of the ‘problem’. It acknowledges that the institution is also responsible for dealing with the ‘problem’ not just through regulation and control, but also by improving the conditions, regime and provision of services in prisons which lead prisoners to use substances to escape from the current realities of their imprisonment.

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**TABLE 1: *Timeline of Key Documents relating to the Response to NPS in Prisons 2015-2016***

<b>Date</b>	<b>Document</b>
<b>January 2015</b>	Ministry of Justice Press Release, New crackdown on dangerous legal highs in prison (2 pages)
<b>February 2015</b>	Criminal Justice and Courts Act 2015 – allows mandatory drug testing for non-controlled substances in prisons
<b>March 2015</b>	Serious Crime Act 2015 – makes it an offence to throw any object into prisons, including drugs and other substances
<b>December 2015</b>	Public Health England – New psychoactive substances (NPS) in prisons: a toolkit for prison staff (34 pages)
<b>May 2016</b>	Psychoactive Substances Act 2016 – restrictions on production, sale and supply of NPS and possession in prisons becomes an offence.
<b>November 2016</b>	Ministry of Justice, White Paper on Prison Safety and Reform (61 pages)